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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 762

ROY E. CRUMMER, HEWEN A. LASSETER, COURTNEY S. TURNER, WILLIAM J. MEREDITH, JAMES G. MARTIN, VERNON T. McCOMBS, MARJORIE SCHOCKLEY, HERBERT MOON, ROY F. PRESTON, CARL A. MORAWITZ, R. E. CRUMMER & COMPANY, A CORPORATION, AND THE CRUMMER COMPANY, A CORPORATION,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

R. B. CALDWELL,
FRANCIS X. BUSCH,
E. R. SLOAN,
THOMAS M. LILLARD,
Attorneys for petitioners, R. E. Crummer & Company, Roy E. Crummer, William J. Meredith, Courtney S. Turner and Hewen A. Lasseter.

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Of Counsel.

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Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Roy E. Crummer, Hewen A. Lasseter, Courtney S. Turner, William J. Meredith, James G. Martin, Vernon T. McCombs, Marjorie Schockley, Herbert Moon, Roy F. Preston, Carl A. Morawitz, R. E. Crummer & Company, a corporation, and The Crummer Company, a corporation, by the undersigned, their respective counsel, pray that this Court issue a writ of certiorari to review the judgment of the United States Circuit Court of Appeals for the Tenth Circuit, entered in the above-entitled cause on

November 2, 1945 (R. 171), reversing a judgment of the United States District Court for the District of Kansas, Second Division, which had sustained demurrers to the indictment in the above-entitled cause.

OPINION BELOW.

The District Court did not file a written opinion. The grounds on which the District Court sustained the demurrers were stated orally and appear at R. 154 to 158.

The opinion of the United States Circuit Court of Appeals for the Tenth Circuit (R. 161-171) has not been officially reported.

JURISDICTION.

The jurisdiction of this Court is invoked under § 240 (a) of the Judicial Code, as amended. 28 U.S.C.A. § 347 (a).

Jurisdiction of the Circuit Court of Appeals to review a judgment of the District Court sustaining the demurrers to the indictment was invoked by the United States under the provisions of 18 U.S.C.A. § 682.

The judgment of the Circuit Court of Appeals was entered on November 2, 1945. (R. 171.)

Petitioners' application for a rehearing was denied on December 11, 1945, Phillips, J., dissenting. (R. 184.)

QUESTIONS PRESENTED BY ALL PETITIONERS.

The questions presented are: (1) whether it is consistent with the Sixth Amendment to overrule demurrers to an indictment on the theory, that, where there are two constituent elements of a federal offense, the accused has less right to be properly informed by the indictment in respect of one constituent element of the offense than is his

admitted constitutional right with respect to the other element; (2) whether it was proper to overrule demurrers to the indictment in this case on the theory that its substantial defects could be remedied by a bill of particulars; and (3) whether an indictment which is vague, indefinite and inconsistent, and amounts virtually to the charge of an offense in the words of the Statute, satisfies the requirements of the Sixth Amendment; (4) whether the Court of Appeals has so departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

QUESTION SEPARATELY PRESENTED BY THE CRUMMER COMPANY.

Whether it was proper for the Circuit Court of Appeals to hold The Crummer Company to trial on *two* counts of the indictment (8-9) when, on the appeal to that Court, the Government had challenged the District Court's determination as to only *one* count of the indictment, namely, Count 9.

AMENDMENT VI.

"In all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation; * * *"

STATUTE INVOLVED.

The pertinent provisions of the Mail Fraud Statute (18 U.S.C.A. § 338) are as follows:

> "Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises * * * shall, for the purpose of executing such scheme or artifice or attempting so to do, place, or cause to be placed,

any letter, postal card, * * * writing, circular, pamphlet, or advertisement, * * * in any post office, * * * or authorized depository for mail matter, to be sent or delivered by the post office establishment of the United States, or shall take or receive any such therefrom, * * * or shall knowingly cause to be delivered by mail according to the direction thereon, * * * any such letter, postal card, * * * writing, circular, pamphlet, or advertisement, shall be fined not more than $1,000, or imprisoned not more than five years, or both."

STATEMENT OF MATTER INVOLVED.

Ten individuals and two corporations were made defendants to an indictment (R. 1-52), consisting of twelve counts and purported to be laid under the Mail Fraud Statute. (18 U.S.C.A. § 338.)

Each of the defendants filed demurrers (R. 52-64) which in substance challenged the sufficiency of the indictment on the following grounds: (1) that it was so vague, indefinite, uncertain and inconsistent as not to constitute a statement of a criminal charge; (2) that it failed to properly advise the defendants of the cause or nature of the charges or accusations as required by the Sixth Amendment to the Constitution of the United States; (3) that it was duplicitous; and (4) that there was a misjoinder of offenses. (R. 52, 56, 59, 61, 62.)

The District Court heard argument of respective counsel in support of the demurrers and indictment. (R. 72-157.) After taking the matter under advisement the Court sustained the demurrers of the individual defendants: "upon the ground that the indictment is so vague and indefinite and inconsistent that it fails adequately to apprise the defendants of the nature and cause of the accusation." (R. 158.)

In the case of the corporate defendant, The Crummer

Company, the District Court sustained the demurrer of The Crummer Company to all except one count of the indictment upon an additional ground, namely, that the letters alleged by the indictment to have been placed in the United States mails were mailed prior to the time at which it was alleged The Crummer Company became a party to the alleged scheme. (R. 158.)

The District Court having sustained the demurrers to the indictment on grounds that it was defective as a pleading—and there being no construction of a Statute involved in the ruling—the United States petitioned for and obtained leave to appeal to the Tenth Circuit Court of Appeals under the Act of May 9, 1942, c. 295, sec. 1. (56 Stat. 271; 18 U.S.C.A. § 682.)

In the case of all of the individual defendants, the Tenth Circuit Court of Appeals reversed the judgment of the District Court and remanded the cause with directions to enter an order overruling their individual demurrers. (R. 172.)

In the case of The Crummer Company, the Circuit Court of Appeals affirmed the judgment of the District Court in respect of ten of the twelve counts, but entered a judgment of reversal on the *two* remaining counts, namely Counts 8 and 9. (R. 172.) The Crummer Company contends on this petition that, since the United States stated in its briefs filed on the appeal (R. 192) that the Government did not challenge the determination of the District Court, (which limited The Crummer Company's liability to the charge made in Count 9) that the judgment of the Circuit Court of Appeals reversing the District Court on two counts is obviously erroneous.

Petitioners' application for a rehearing was denied December 11, 1945, Phillips, J., dissenting without written opinion. (R. 172, 184.)

The Circuit Court of Appeals granted a stay of mandate to permit submission of this petition. (R. 184.)

The matter to which this indictment relates grows out of the financial difficulties encountered during the economic collapse of the 1930's by the city of Panama City, located in Bay County, Florida. (R. 30.) The obdurate and conflicting claims of creditors and municipality were finally solved in the summer of 1942 when R. E. Crummer & Company, one of the corporate defendants, brought about a refunding arrangement of the city's indebtedness (not criticized in the indictment), which restored the bondholders to a current status and provided for a permanent 4% interest rate. This result is now assailed in an indictment as having been the product of a scheme and artifice to defraud. Petitioners contend that the indictment does not state, with that particularity required by the Constitution, either the facts or the theory of law, which operate to convert, that which was a legitimate commercial transaction into a so-called scheme or artifice to defraud.

The indictment charges the defendants with having devised a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, and by omissions to state material facts. (R. 2.) The persons alleged to have been defrauded were twenty-four holders of municipal bonds issued by the City of Panama City, Florida. (R. 2.) Nowhere in the indictment is there any description of the Panama City bonds or coupons which it is claimed were the object of the scheme, nor is there any description of the Panama City bonds or coupons alleged to be owned by any of the persons to be defrauded, nor what bonds or what interest the defendants or any of them sought to obtain. An acquittal on this indictment will afford these petitioners absolutely no protection against a second similar

prosecution which describes a specific series of bonds, and relies upon different indictment letters, because it cannot be told from this indictment what Panama City bonds or what Panama City coupons were the object of the so-called scheme.

It is alleged that the scheme or artifice commenced on about January 1, 1931, and extended up to the date of the return of the indictment on August 3, 1944. (R. 2, 52.) The criticised activities of the defendants, therefore, cover a period of more than thirteen years.

It is charged that as part of the scheme, the defendants "dominated and controlled" the business of three corporations, respectively, The Brown-Crummer Investment Company, organized in 1919; R. E. Crummer & Company, organized in 1934; and The Crummer Company, organized in November 1942. (R. 2, 3, 4.) The petitioners are *not* informed by the indictment of *any* facts, evidentiary or ultimate, from which is drawn the conclusion that the defendants "dominated and controlled" the said corporations.

The indictment charges (R. 3) that it was part of the alleged scheme for defendants to organize, in May 1931, under a written instrument entitled "Bondholders Committee Agreement" a Bondholders Protective Committee which would be under the "domination and control" of the defendants; that holders of such securities as had been designated by the Committee as eligible for deposit with it, might become parties to the Agreement by depositing their bonds with The Brown-Crummer Company. (R. 3.) The indictment does not assert that Panama City bonds were ever designated by the Committee as eligible for deposit with it. It is not alleged that either the names of persons constituting the Committee or the terms of the Agreement were unknown to the Grand Jurors. The in-

dictment does not state whether it is claimed that this Committee was composed of the defendants or of other persons. The substance of the Agreement is not stated. The indictment does not claim that the defendants ever misrepresented the Agreement—it is said that they withheld from the persons defrauded, information as to its terms. The indictment contains no allegation as to the substance of the information withheld or when or under what circumstances in the alleged thirteen-year span of the scheme the nondisclosure occurred. A statement of the substance of the information claimed to have been withheld, the time, and the circumstances then prevailing are imperative, both in order that the defendants can prepare their defense thereto and in order that it might be seen, whether, under the circumstances, there then existed any duty to speak. What part this Committee played or was to play in the so-called scheme is nowhere stated. This indictment is so indefinite in its allegations concerning the Bondholders Protective Committee that the District Court said at the hearings: "• • • I am unable to determine from the indictment just what part the Bondholders Committee played in this transaction • • •." (R. 124.)

The indictment charges (R. 4) that the defendants would and did "compose, phrase and arrange" written powers of attorney and temporary representation agreements which they "fraudulently" induced the holders of Panama City bonds to sign and deliver to the defendants together with their past due Panama City bonds and appurtenant coupons. It appears from the indictment that there were different powers of attorney and temporary representation agreements, so-called. (R. 17, 18.) No facts, either evidentiary or ultimate, are stated to support the conclusion that such agreements were "fraudulently obtained" from bondholders.

It is then charged (R. 5) that it was part of the scheme for the defendants to "involve" the (undescribed) Panama City bonds and interest coupons of the persons alleged to have been defrauded, in two separate suits brought against the City of Panama City in the United States Court for the Northern District of Florida. No times being stated, it is said judgments were obtained thereupon and money and new refunding bonds collected; that the defendants failed to disclose to the persons defrauded information concerning the collection of money and new refunding bonds, failed to make an accounting, and would and did convert a "large part" to their own use. (R. 5.) Here the indictment is particularly equivocal, vague and uncertain. At one point the text of the indictment is so couched that it would appear that the last mentioned allegations concerned both suits. (R. 5.) At another point (R. 9) it would seem that only one suit is meant. There is no description of bonds or indication of the ownership of the bonds involved in either of the judgments; or the amount of such bonds. There is no claim that the petitioners did not own or have any interest in such bonds and coupons. There is no allegation of the amount of money claimed to have been converted. This is referred to merely by the vague phrase: "a large part." There is no identification of the new bonds which it is alleged were received on the judgment, nor to whom the bonds belonged. There is no allegation as to the time when the suits were brought. Nor when any monies were collected or when the alleged conversion took place. All charges are couched in the vaguest and most general of terms.

The District Court was particularly troubled and puzzled by these portions of the indictment.* (R. 116, 121, 124.)

* "The Court: (To the District Attorney.) Now, I tell you one reaction I have had in making a study of this indictment. The defendants contend that they are unable to determine the nature of the charges made against them. In studying this indictment, and I find that I have had consider-

The District Court pointed out that there was nothing in the language of the indictment to indicate that a refunding agreement which was made with the City in May, 1942, had anything to do with the bonds involved in the suits. (R. 123.) The entire situation is still further confused by a construction placed upon this indictment by the United States in the brief filed in the Circuit Court of Appeals. (R. 217.) There respondent said (notwithstanding allegations to the effect that bonds and their coupons were obtained at the same time) that the scheme was related, *not* to the principal but to the interest on the bonds. Thus it would appear that the theory of the United States is that the so-called scheme (alleged to have been one to defraud persons desirous of recovering their money invested in Panama City bonds (R. 2)) was both valid and invalid at one and the same time. Proper in respect of principal; improper in respect of interest.

With respect to the indictment's statement of the false representations and pretenses alleged to have been employed, the indictment charges the defendants with having represented (no time being stated) that the city of Panama City was making funds available to liquidate, at the respective rates of 2 % and 3%, prior to and during the years 1937-1940, the defaulted 5%, 6% and 7% interest coupons which had matured during those years, when, as a matter of fact, the defendants had provided the funds to liquidate the coupons. (R. 8.)

The indictment makes no charge that the 2% and 3% price paid to the bondholders was inadequate or improvident in the light of circumstances prevailing at the time. A refunding agreement was made with Panama City on

able trouble myself trying to determine from this indictment what they are charged with, and I am supposed to be a little more versed in the interpretation of an indictment than the defendants would be, so I wish you would try to tell me just what you have charged these defendants with in this indictment." (R. 116.)

May 22, 1942. (R. 6.) It would be a matter of common knowledge that at this date economic conditions throughout the nation had measureably improved. It appears from an exhibit contained in the indictment (R. 30-35) (the verity of which is not challenged) that on June 12, 1942, after the making of the refunding agreement above referred to, in a general letter addressed to all Panama City bondholders, the improved economic conditions in the Panama City area, which had developed since petitioners' purchase of the coupons, were called to the attention of the bondholders. Bondholders who had previously released their coupons to the defendants at the 2% and 3% price, respectively, were then offered the opportunity, or choice, to reclaim their coupons at the price previously paid to them and instead to pay to defendants an expense charge—which is not claimed by this indictment to have been unreasonable. If, as the United States says, the scheme which it seeks to allege was a scheme to mulct investors not of the *principal* of their bonds, but rather of *interest*, then the exhibits contained in this indictment are certainly wholly inconsistent with and completely negative any inference of fraud, civil or criminal, in respect of defaulted coupons. (R. 30-35.) This indictment carries on its face a refutation of its own charges.

In respect of the second species of false representations sought to be alleged, the allegations of the indictment are peculiarly indefinite and wholly unrelated to one another. It is said (R. 9) that the defendants represented to the Panama City bondholders that the defendants would represent the holders and collect the principal of and interest on their bonds for a litigation expense of 5% of the amount of principal and 10% of the amount of interest collected. It is nowhere alleged in the indictment that (1) the defendants actually charged the bondholder with a greater amount

of expense, or (2) sought to charge a greater amount of expense, or (3) withheld money on the claim that the amount withheld was litigation expense. Instead there is asserted, at this point in the indictment, the vague and general charges heretofore referred to respecting the alleged failure of defendants to account for monies and refunding bonds collected in one of the suits. In addition to being vague, indefinite and general, such allegations are wholly unrelated to and do not constitute allegations to the effect that the litigation expense was ever misrepresented as such.

In respect of the refunding agreement which was entered into by the defendants with the City of Panama City on May 22, 1942, alleged by the indictment also to have been part of the scheme (R. 6-7), it appears that the city of Panama City issued new 30-year 4% refunding bonds which were exchanged for the (undescribed) City's bonds theretofore outstanding. (R. 7.) The indictment contains a charge—again stated in the vaguest of terms—that the defendants would not "protect" the interests of the bondholders by them represented. (R. 9.) There is not a single sentence in this indictment which challenges the wisdom or propriety of the refunding arrangements. Not a single allegation in this indictment asserts that in the making of the refunding agreement with the City the defendants did not adequately protect the interests of the bondholders. Nowhere is it claimed that a better bargain should have been procured. It is not claimed that the refunding arrangement was an improvident one for the bondholders, or, that a better deal was possible under the circumstances then prevailing. Quite to the contrary it appears from an exhibit contained in the indictment that the refunding agreement represented the culmination of a long fight on the part of the defendants to protect the interests of Panama City bondholders. The financial difficulties of Panama City were interwoven with the financial difficulties of its

home county, Bay County. (R. 31.) The City's problems could not be settled until the County's were first settled. Obstructionist tactics of one Bay County holder extending over a period of ten years (R. 31) "not only seriously jeopardized the success of the Bay County undertaking authorized in 1932, but constituted an insurmountable barrier to the Panama City problem, since the taxable resources of the City were responsible for approximately 50% of the liability which this single creditor was accumulating and attempting to enforce against Bay County." (R. 31.) The complete history of events leading up to the refunding agreement were set forth in the general letter to the bondholders. It completely negatives any fraud, civil or criminal. Attention is respectfully directed thereto. (R. 30-35.)

The indictment sets out nine letters (the letters in some counts being duplications of others). (R. 11-13; 13-15; 16-26; 36-41; 26-28; 28-36; 42-43; 50-51; 47-48; 48-50.)

When these letters are read in connection with the allegations of the indictment, and particularly in the light of the construction placed upon the indictment by the United States, they show on their face that they could not have been in execution of any scheme.

The false representations which are alleged to have constituted the scheme concerned representations to the effect that the City was providing funds to liquidate or purchase, at 2% and 3%, interest coupons which matured during the years prior to 1937, and during the years 1938, 1939 and 1940, whereas the defendants had in fact provided the funds. (R. 8.)

The indictment makes *no* claim of *any* false representations with respect to interest coupons maturing during the years 1941 and 1942.

The indictment letters contained in Counts 2, 3, 4, 7

and 8, are all dated at some time in 1942. They propose to pay to the addressee named, his or her defaulted 1941 interest coupons *at the original coupon rate of* 6%. Such being the case, these indictment letters could not possibly have furthered that scheme which is sought to be alleged. It is not *every* letter that is mailed, even in connection with an alleged scheme, that constitutes a misuse of the mails (*Kann* v. *U. S.*, 323 U. S. 88); it is only those letters which further the scheme. In the case of the indictment letter in Count 2, in addition to paying the 1941 coupon at the original rate of 6%, it paid a small balance of the 1940 defaulted interest at the rate of 3%. The letter shows on its face that the check enclosed is the check of R. E. Crummer & Company, one of the corporate defendants, and therefore could have constituted no deception as to source of payment. In the case of the indictment letters and exhibits contained in Count 8, it appears from the face of the instruments that coupons which had matured in 1939 and 1940—and were the only coupons received by the defendants with the bonds being accounted for in the letter (R. 44)—were accounted for and paid for to the addressee at the original 6% rate.

The indictment letter contained in Count 1 related to the *principal* of a bond of the addressee which had been reduced to judgment. (R. 11.) Since respondent concedes that the scheme sought to be alleged did not concern any of the *principal* of any bonds, the letter could not have been in furtherance of the scheme charged.

The indictment letter in Count 6 deserves special mention. This letter forwarded to the addressee indicated, the lengthy report of June 12, 1942, concerning the refunding agreement that had been signed with Panama City on May 22, 1942, referred to earlier in another connection. The letter *particularly invited* the addressee's attention to a

reading of the enclosed report in respect of the terms on which the new refunding bonds were issued. Such a letter indicates on its face that it could not possibly have furthered any species of fraud, either civil or criminal.

The indictment letters in Counts 9 and 12 are related papers. Tersely stated, the *principal* of the bonds had apparently been turned in to the defendants under one name; the defaulted *interest* coupons under another name. When the confusion was being straightened out by the defendants they remitted for the coupons at the original coupon rate of 6%, less a collection charge of 10%. At the oral argument in the District court (*dehors* the record, but in response to a question of the District Court) the United States attorney, with expressed reluctance, explained to the District Judge that the government's criticism in this particular case, is not that there was *no* accounting for the coupons reduced to judgment, but rather that *in making the accounting* and computing interest, interest upon interest had not been considered. (R. 135, 136.)

The indictment letters set forth in Counts 10 and 11 are merely intra-office communications or memorandums which quite obviously could not have affected the scheme one way or the other.

The general allegation usually found in indictments of this type, to the effect that the letters were in execution of the scheme, cannot be relied upon to sustain an indictment where, as here, when read in connection with the remaining averments of the indictment, their ineffectiveness for any such purpose appears from the face of the instruments themselves.

When more than one scheme is alleged in a single count of an indictment, it is bad for duplicity. The scheme alleged here could not have been, as this indictment undertakes to charge, a unitary scheme conceived on January 1, 1931. (R.

2.) One scheme, alleged to have commenced about May 1, 1931, was to operate during the economic depression and was to assemble securities either in the hands of a Bondholders' Committee or under representation agreements—it is not clear which—and involve them in litigation. That contemplated the coercive processes of the courts. Another scheme, eleven years after the alleged inception of the vague basic scheme,was the refunding under the agreement of May 22, 1942, of securities not already merged in judgment. The latter contemplated voluntary liquidation. It became effective during the years of war prosperity and did not involve judicial coercive processes. Charging the defendants, therefore, with having devised, in January 1931, a scheme or artifice which contemplated, at one and the same time, both the exercise of the coercive processes of the courts made necessary by an economic depression, and on the other hand with the voluntary processes of a refunding operation conducted under the conditions of war-boom prosperity, is to attribute to defendants an art of divination impossible to the human mind. The two conceptions are mutually antagonistic and make the charge duplicitous.

In conclusion, one special point, applicable only to The Crummer Company, remains to be stated.

The District Court sustained the demurrer of The Crummer Company to all except Count 9 of the indictment, on the additional ground that it affirmatively appeared from the indictment that the letters relied upon to show use of the mails had occurred before The Crummer Company was organized and before it was claimed to have become a party to the so-called scheme (R. 65). On the appeal to the Circuit Court of Appeals the Government specifically stated in its brief that it *did not* challenge this determination of the District Court—which limited the liability of The Crummer Company, if any, to Count 9 of the indictment. (f.n. R. 192.)

Therefore, as to The Crummer Company, only *one* count of this indictment was on review in the Circuit Court of Appeals. Notwithstanding the Government's position, the judgment of the Circuit Court of Appeals holds The Crummer Company to *two* counts, namely 8 and 9. This, The Crummer Company claims, is manifest error.

REASONS FOR ALLOWANCE OF WRIT.

First. In holding that the right of an accused to be informed by an indictment of the nature and cause of the accusation is not the same as to *all* of the constituent elements of the crime alleged, the decision of the Circuit Court of Appeals, reversing the judgment of the District Court, is in conflict with the Sixth Amendment and with the decisions of this Court.

Second. By being required to stand trial upon an indictment which is indefinite, vague and inconsistent in substantial particulars appertaining to an essential ingredient of the crime sought to be charged, the petitioners are deprived of the guaranty afforded to them by the Sixth Amendment to the Constitution of the United States.

Third. The Circuit Court of Appeals departed from the accepted and usual course of judicial proceedings, requiring an exercise of this Court's power of supervision.

SPECIFICATION OF ERRORS TO BE URGED.

1. The Circuit Court of Appeals erred in reversing the judgment of the District Court as to all petitioners.

2. The Circuit Court of Appeals erred in reversing the judgment of the District Court as to The Crummer Company on Counts 8 and 9 of the indictment, because the United States appealed only from the District Court's determination in respect of Count 9.

PRAYER FOR WRIT.

Roy E. Crummer, Hewen A. Lasseter, Courtney S. Turner, William J. Meredith, James G. Martin, Vernon T. McCombs, Marjorie Schockley, Herbert Moon, Roy F. Preston, Carl A. Morawitz and R. E. Crummer & Company, a corporation, and The Crummer Company, a corporation, by the undersigned, their counsel, respectfully pray that a writ of certiorari issue to the United States Circuit Court of Appeals for the Tenth Circuit, to the end that the record of this cause be brought to this Court, that this cause may be reviewed and determined by this Court, and that your petitioners may have such other and further relief as the nature of this case may justify.

In support of this, their petition, they tender the supporting brief and argument of counsel hereunto annexed.

Respectfully submitted,

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